

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JIMMY AVILA,

Plaintiff,

-against-

ACACIA NETWORK, INC, et al.,

Defendants.

1:24-CV-0884 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

By order and judgment dated August 26, 2024, and entered on August 31, 2024, the Court dismissed this *pro se* action. (ECF 6 & 7.) On September 27, 2024, Plaintiff filed a notice of appeal, a motion for an extension of time to file a notice of appeal brought under Rule 4(a)(5) of the Federal Rules of Appellate Procedure (“Rule 4(a)(5)”), a motion for leave to proceed *in forma pauperis* (“IFP”) on appeal, and an application to appeal IFP. (ECF 8 & 9.)

For the following reasons, the Court denies Plaintiff’s Rule 4(a)(5) motion as unnecessary, and denies his motion for leave to proceed IFP on appeal and his application to appeal IFP.

DISCUSSION

A. Rule 4(a)(5) motion

A party normally has 30 days from the entry date of the order or judgment being challenged to file a timely notice of appeal. *See* Fed. R. App. P. 4(a)(1)(A). Thus, Plaintiff had until September 30, 2024, to file a timely notice of appeal with regard to the abovementioned order of dismissal and judgment. Plaintiff filed his notice of appeal on September 27, 2024, before the relevant period to file his notice of appeal expired. (ECF 9.) Accordingly, the Court

denies Plaintiff's Rule 4(a)(5) motion for an extension of time to file a notice of appeal as unnecessary.

B. IFP on appeal

Under 28 U.S.C. § 1915(a)(3), an “appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). In its August 26, 2024 order and judgment, the Court certified, under Section 1915(a)(3), that any appeal from that order and judgment would not be taken in good faith (ECF 6 & 7), denying IFP for the purpose of an appeal, *see* § 1915(a)(3). Thus, because the Court has already decided that any appeal from the Court's August 26, 2024 order and judgment would not be taken in good faith, the Court denies Plaintiff's motion for leave to proceed IFP on appeal and his application to appeal IFP.

CONCLUSION

The Court denies Plaintiff's motion for an extension of time to file a notice of appeal, brought under Rule 4(a)(5) of the Federal Rules of Appellate Procedure (ECF 8), as unnecessary, because his notice of appeal (ECF 9) is timely. The Court also denies Plaintiff's motion for leave to proceed IFP on appeal and his application to appeal IFP. (*Id.*)

The Court certifies, under 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and, therefore, IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: October 17, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge